PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Kiyoshi FUJIWARA

Group Art Unit: 3652

Application No.: 10/590,303

Examiner: G. ADAMS

Filed: September 1, 2007

Docket No.: 127508

For: CONTAINER INSPECTION/CARGO-HANDLING METHOD AND CONTAINER INSPECTION/CARGO-HANDLING SYSTEM

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the June 12, 2009 Election of Species Requirement, Applicant provisionally elects Species F, Figures 2-4 and 9, with claims 1-19 reading on elected Species F, with traverse. Applicant asserts that at least claims 1, 3, 6-8, 10 and 15-16 are generic to all species.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

> Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical

> features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

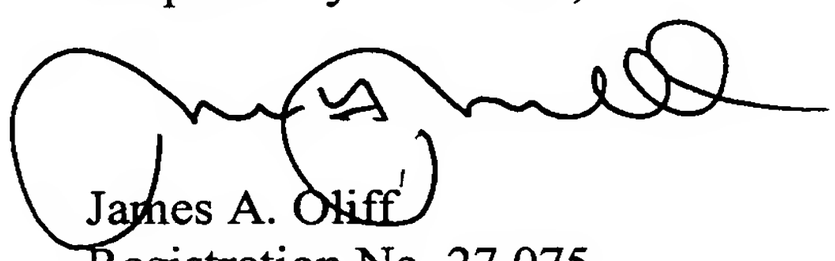
The Office Action, on pages 2 and 3, states that the inventions listed in the seven species do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical feature. However, also on page 3 of the Office Action, it is admitted that the seven species in general require an automated guided vehicle (AGV) and radiation inspection. Thus, the Office Action analysis is incorrect and fails to assert a proper Election of Species Requirement because there is subject matter common to all claims (i.e., all of the independent claims require a special technical feature of an automated guided vehicle and radiation inspection).

Therefore, because there is subject matter common to all the claims and species (*a priori* unity of invention exists between the claims), a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. The Office Action does not establish that the automated guided vehicle and radiation inspection is known in the prior art. In fact, the Office Action does not identify any prior art. Therefore, Applicant respectfully submit that lack of unity of

invention has not been established, and thus an Election of Species Requirement based on a lack of unity of invention is improper.

Thus, withdrawal of the Election of Species Requirement is respectfully requested.

Respectfully submitted,



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Date: July 13, 2009

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